

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

Plaintiff,

v.

A-L PROCESSORS
f.k.a. THE ATLAS-LEDERER COMPANY;
GENERAL MOTORS CORP.;
SENER METAL COMPANY, INC.;
SIMS BROTHERS INC.;
HERMAN STRAUSS, INC.;
THE DAVID J. JOSEPH COMPANY;
LIVINGSTON & COMPANY, INC.;
CONSOLIDATED RAILROAD CORP.;
NAVISTAR INTERNATIONAL CORP.; and
BAILEN BROTHERS, INC.,

Defendants.

Case No. C-3-91-309

Judge Walter H. Rice

CONSENT DECREE WITH BURNS IRON & METAL COMPANY, INC.

TABLE OF CONTENTS

I.	<u>BACKGROUND</u>	1
II.	<u>JURISDICTION</u>	3
III.	<u>PARTIES BOUND</u>	3
IV.	<u>DEFINITIONS</u>	3
V.	<u>REIMBURSEMENT OF COSTS</u>	5
VI.	<u>FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE</u>	6
VII.	<u>CERTIFICATION OF SETTLING DEFENDANT</u>	7
VIII.	<u>COVENANT NOT TO SUE BY PLAINTIFF</u>	8
IX.	<u>COVENANT NOT TO SUE BY SETTLING DEFENDANT</u>	9
X.	<u>COVENANT NOT TO SUE BY RESPONDENT GROUP</u>	10
XI.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u>	11
XII.	<u>NOTICES AND SUBMISSIONS</u>	11
XIII.	<u>RETENTION OF JURISDICTION</u>	13
XIV.	<u>INTEGRATION/APPENDICES</u>	13
XV.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	13
XVI.	<u>EFFECTIVE DATE</u>	14
XVII.	<u>SIGNATORIES/SERVICE</u>	14

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

THE UNITED STATES OF AMERICA

Plaintiffs,

v.

A-L PROCESSORS
f.k.a. THE ATLAS-LEDERER COMPANY;
GENERAL MOTORS CORP.;
SENER METAL COMPANY, INC.;
SIMS BROTHERS INC.;
HERMAN STRAUSS, INC.;
THE DAVID J. JOSEPH COMPANY;
LIVINGSTON & COMPANY, INC.;
CONSOLIDATED RAILROAD CORP.;
NAVISTAR INTERNATIONAL CORP.; and
BAILEN BROTHERS, INC.,

Defendants.

Case No. C-3-91-309

Chief Judge Walter Herbert Rice

CONSENT DECREE
WITH BURNS IRON & METAL COMPANY, INC.

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking, *inter alia*, reimbursement of costs incurred by EPA and the United States Department of Justice ("DOJ") in responding to the release and/or threatened release of hazardous substances at the United Scrap Lead Superfund Site in Concord Township, Miami County, Ohio (the "Site"), together with accrued interest.

B. Pursuant to CERCLA Section 105, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register of September 21, 1984 (49 Fed. Reg. 37,070).

C. In response to a release or a threat of a release of a hazardous substance at or from the Site, EPA, pursuant to 40 C.F.R. § 300.430, completed a Remedial Investigation ("RI") Report in February 1988, and completed a Feasibility Study ("FS") Report in August 1988.

D. Pursuant to CERCLA Section 117, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on August 29, 1988, in a major local newspaper of general circulation. EPA also published notice of the proposed plan for the amended remedial action on January 27, 1997, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on both the proposed original and amended plans for remedial action, and conducted public meetings to discuss the proposed remedial plans and obtain public comments. Copies of the transcripts of each public meeting are available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

E. In 1988, EPA selected a remedial action plan for the Site, which was embodied in a Record of Decision ("ROD") signed by the Regional Administrator on September 30, 1988. The ROD was amended on June 27, 1997.

F. In 1991, EPA and certain parties entered into an Administrative Order on Consent which required the performance of certain response actions at the Site, including the installation of a fence. The respondents to the Administrative Order have satisfactorily performed the response actions required under that Order in a manner consistent with the National Contingency Plan ("NCP") and have satisfied all of the provisions of the Order.

G. The United States reached a separate settlement in this case with several of the Potentially Responsible Parties ("PRPs") for the Site (herein referred to as the "Initial Settlement"), pursuant to which they have agreed to perform the Remedial Design/Remedial Action at the Site with EPA oversight and approval. This Initial Settlement is embodied in a Consent Decree entered by the court on September 28, 1998. The signatory defendants to the Initial Settlement, who are identified individually in Appendix B, shall herein be referred to as the "Respondent Group."

H. In August 1998, the Court granted the Respondent Group's motion to join new defendants in the United States' cost recovery action pursuant to Fed. R. Civ. P. 20. Pursuant to the Second Case Management Order entered by the Court on September 15, 1998, the Plaintiff's Complaint and the contribution cross-claims later filed by the Respondent Group were deemed to be asserted against each new defendant. United States consented to joinder as defendants of thirty-five of the other PRPs sued by the Respondent Group, including certain defendants joining in this Consent Decree. At the Court's direction, on September 28, 2001, the Respondent Group filed formal claims against these PRPs seeking contribution toward the cleanup pursuant to Section 113(f)(1), 42 U.S.C. § 9613(f).

I. The United States and the Respondent Group have previously settled with a number of Defendants in Consent Decrees entered in this case on April 10, 2000, June 19, 2002, and July 13, 2005.

J. The United States has also previously settled with some (but not all) of the present and former shareholders of Defendant Burns Iron & Metal in a related action of United States v. Larry Katz et al., Case No. 3:05 CV 0058 (S.D. Ohio). Specifically, the United States and Robert William Burns, David R. Burns, Emma Jean Burns Trust, Joseph A. Burns, and Joyce M. Burns entered into a Stipulation, Settlement Agreement and Order, which is attached at Appendix C.

K. Defendant Burns Iron & Metal Co. ("Settling Defendant") does not admit any liability to Plaintiff or to the Respondent Group arising out of any alleged transactions or occurrences at the Site.

L. The United States, the Respondent Group, and the Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over the Settling Defendant. The Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, upon the Respondent Group and its constituent heirs, successors and assigns, and upon the Settling Defendant and its heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. "Initial Settlement" shall mean the settlement reached between the United States on behalf of EPA and the Respondent Group embodied in a Consent Decree entered by the Court in this action on September 28, 1998.
- h. "Interest" in relation to Section VI shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).
- i. "National Contingency Plan" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to CERCLA Section 105, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- j. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.
- k. "Parties" shall mean the United States, the Respondent Group and the Settling Defendant.
- l. "Past United States Response Costs" shall mean all costs incurred by EPA and DOJ for response actions at or in connection with the Site not inconsistent with the National Contingency Plan, that EPA paid through the date of entry of this Consent Decree, plus Interest on all such costs that has accrued through such date.

- m. "Past Respondent Group Costs" shall mean all costs incurred by the Respondent Group at or in connection with the Site through the date of entry of this Consent Decree, plus Interest on all such costs that has accrued through such date.
- n. "Plaintiff" shall mean the United States of America on behalf of EPA.
- o. "Record of Decision" or "ROD" shall mean the EPA Amended Record of Decision relating to the Site signed on June 27, 1997 by the Regional Administrator, EPA Region 5, all attachments thereto, and any amendments or Explanations of Significant Differences thereto.
- p. "Remedial Action" shall mean the response actions at the Site set forth in the Record of Decision.
- q. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.
- r. The "Settling Defendant" shall mean Burns Iron & Metal Company, Inc., which is located at 911 North Front Street in Fremont, Ohio.
- s. "Site" shall mean the United Scrap Lead Superfund site, encompassing approximately 25 acres, located at 2117 South County Road 25A, in Concord Township, Miami County, Ohio, and depicted more clearly on the map included in Appendix A.
- t. "Respondent Group" shall mean those parties identified in Appendix B.
- u. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF COSTS

4. Payment of Past United States Past Response Costs to the EPA Hazardous Substance Superfund. Within 30 days of entry of this Consent Decree, the Settling Defendant shall pay to the EPA Hazardous Substance Superfund the amount of three hundred twelve thousand dollars (\$312,000). The payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 9124845, the EPA Region and Site Spill ID Number 05H5, DOJ Case Number 90-11-3-279B, and the name and address of the party making the payment. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Southern District of Ohio following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. The Settling Defendant shall send notice to EPA and DOJ that payment has been made in accordance with Section XII (Notices and

5. Payment of Past Respondent Group Past Costs to the Respondent Group. Within 30 days of entry of this Consent Decree, the Settling Defendant shall pay to the Respondent Group the amount of eighty-eight thousand dollars (\$88,000). Amounts to be paid under this Paragraph to the Respondent Group shall be made by certified check or checks or cashier's check or checks made payable to "United Scrap Lead PRP Group Trust Fund, Account No. 75-0046-005" referencing USAO file number 9124845, EPA Region 5, and Site/Spill ID No. 05H5, and U.S. DOJ case number 90-11-3-279B, and the name and address of the Settling Defendant. The Settling Defendant shall send the check, together with a transmittal letter, to:

Respondent Group
c/o Ben L. Pfefferle, III, Esq.
Baker & Hostetler, LLP
Capitol Square, Suite 2100
65 East State Street
Columbus, OH 43215-4260

The Settling Defendant shall send a copy of the check and transmittal letter to the Department of Justice and EPA as specified in Section XII (Notice and Submissions).

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

6. Interest on Late Payments. In the event that any payments required by Section V (Reimbursement of Response Costs) or Section VI, Paragraph 7 (Stipulated Penalty), are not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

7. Stipulated Penalty.

a. If any amount due to be paid under this Consent Decree is not paid by the required date, the Settling Defendant required to make such payment shall pay as a stipulated penalty, in addition to the Interest required by Paragraph 6, \$500 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, IL 60673

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, USAO file number 9124845, EPA Region 5, and Site/Spill ID No. 05H5, and U.S. DOJ case number 90-11-3-279B. Copies of check(s) paid

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, USAO file number 9124845, EPA Region 5, and Site/Spill ID No. 05H5, and U.S. DOJ case number 90-11-3-279B. Copies of check(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to EPA and DOJ as provided in Section XII (Notices and Submissions).

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified the Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due or the day a violation occurs, and shall continue to accrue until receipt by EPA of the payment due. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

8. If the United States brings an action to enforce this Consent Decree, the Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

9. Payments made under Paragraphs 6-8 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of the Settling Defendant's failure to comply with the requirements of this Consent Decree.

10. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VII. CERTIFICATIONS BY SETTLING DEFENDANT

11. In order to induce the Plaintiff to enter into this settlement, the Settling Defendant, by its signature hereto, affirms, to the best of its knowledge and belief, the following:

- a. Settling Defendant has conducted a thorough, comprehensive, good faith search for, and has fully and accurately disclosed to EPA, all information currently in the possession, custody or control of it or its officers, directors, employees, contractors or agents, that relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;
- b. Settling Defendant has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to Burns Iron & Metal's potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site;

- c. Settling Defendant has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e);
- d. Settling Defendant has provided to EPA all material information of which it is aware relating to the finances, assets, insurance coverage, and all other matters related to the resources available to Burns Iron & Metal to reimburse the Plaintiff's and the Respondent Group's response costs at the Site;
- e. The information described in Subparagraphs a, c, and d above is true and accurate; and
- f. Settling Defendant neither possesses nor knows of any other documents or information that would suggest that Burns Iron & Metal has in its possession, custody or control, other assets, income or any interests at all in property of any kind that could be used to reimburse the EPA Hazardous Substances Superfund or the Respondent Group for response costs incurred or to be incurred at the Site.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

12. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 13 (Reservation of Rights by United States), the United States covenants not to sue Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with respect to the Site. This covenant not to sue shall take effect upon receipt of all payments required of the Settling Defendant by Section V, Paragraphs 4 (Payment of Past Response Costs to the EPA Hazardous Substance Superfund) and 5 (Payment of Costs to the Respondent Group) and Section VI, Paragraphs 6 (Interest on Late Payments) and 7 (Stipulated Penalty). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendant of its obligation under this Consent Decree. This covenant not to sue extends only to the Settling Defendant and does not extend to any other person.

13. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 12 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to:

- a. liability for failure of the Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and

d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Consent Decree.

14. The covenant set forth in Paragraph 12 is contingent upon the veracity of the certifications made by the Settling Defendant in Paragraph 11 herein. Any misrepresentation, misstatement or material omission by the Settling Defendant in the certification made in Paragraph 11, upon written notice by the United States to the Settling Defendant, renders the covenant not to sue void. Following the voiding of any covenant not to sue pursuant to this Paragraph, in any action brought by the United States against the Settling Defendant, the Settling Defendant shall not raise any defenses based in whole or in part on the time elapsed between the entry of this Consent Decree and the commencement of such action by the United States, including but not limited to defenses based upon any statute of limitations, laches, waiver, estoppel, or lack of jurisdiction.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT

15. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which the Past United States Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Ohio, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

16. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against any previously settling party in this action, including the Respondent Group or its contractors, with respect to the Site or this Consent Decree, including but not limited to:

a. any claim arising out of response actions at the Site; and

b. any claim against the Respondent Group or any previously settling party pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

17. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply with respect to any defense, claim, or cause of action that the Settling Defendant may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against the Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. COVENANT NOT TO SUE BY RESPONDENT GROUP

19. The Respondent Group covenants not to sue Settling Defendant pursuant to Section 107(a) or Section 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, with respect to the Site. This covenant not to sue shall take effect as to the Settling Defendant upon receipt of all payments required of the Settling Defendant by Section V, Paragraph 5 (Payment of Costs to the Respondent Group) and Section VI, Paragraph 6 (Interest on Late Payments). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendant of its obligation under this Consent Decree. This covenant not to sue extends only to the Settling Defendant and does not extend to any other person.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

20. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraphs 16 and 17, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

21. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. For purposes of this Section, and except as provided in Paragraph 13, the "matters addressed" in this Consent Decree shall be the Settling Defendant's liability pursuant to CERCLA for Response Costs incurred or to be incurred by the United States, or by any other potentially responsible person with respect to the Site.

22. The Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, the Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

23. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

24. This Consent Decree shall not alter in any way the terms and conditions of the Initial Settlement which shall remain in full force and effect, except to the extent that Paragraph 19 of this Consent Decree modifies Paragraph 99 of the Initial Settlement.

XII. NOTICES AND SUBMISSIONS

25. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at

the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the Respondent Group, and the Settling Defendant, respectively.

As to the United States:

As to DOJ

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ #90-11-3-279B

As to EPA

Sherry L. Estes
Associate Regional Counsel
ATTN: United Scrap Lead Salvage Site
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

Richard C. Karl
Director, Superfund Division
Remedial Project Manager
ATTN: United Scrap Lead Salvage Site
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

As to the Respondent Group:

Ben L. Pfefferle, III, Esq.
Baker & Hostetler LLP
Capitol Square, Suite 2100
65 East State Street
Columbus, OH 43215-4260

As to Settling Defendant:

Steve Haughey
Frost Brown Todd LLC
2200 PNC Center
201 E. Fifth Street
Cincinnati, Ohio 45202-4182

XIII. RETENTION OF JURISDICTION

26. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. INTEGRATION/APPENDICES

27. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site; "Appendix B" is the complete list of the Respondent Group, and "Appendix C" is the Stipulation, Settlement Agreement and Order between the United States and Robert William Burns, David R. Burns, Emma Jean Burns Trust, Joseph A. Burns, and Joyce M. Burns.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

28. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The Settling Defendant consents to the entry of this Consent Decree without further notice.

29. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. EFFECTIVE DATE

30. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVII. SIGNATORIES/SERVICE

31. The undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

32. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

33. The Settling Defendant agrees to accept service of process with respect to all matters arising under or relating to this Consent Decree through mail sent to the following authorized agent:

STEPHEN HAUGHEY
Frost Brown Todd LLC
2200 PNC Center
201 E. Fifth Street
Cincinnati, Ohio 45202-4182

Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

34. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

SO ORDERED THIS _____ DAY OF _____, 2002.

WALTER HERBERT RICE
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. The Atlas-Lederer Co. et al, relating to the United Scrap Lead Superfund Site.

FOR THE UNITED STATES

Date: _____

5/5/06

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural
Resources Division

JOSEPH W.C. WARREN
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
(202) 514-4113/616-6584 (FAX)

GREGORY G. LOCKHART
United States Attorney
Southern District of Ohio

PATRICK D. QUINN
Assistant U.S. Attorney
Southern District of Ohio
Federal Building, 602
200 W. Second Street
Dayton, OH 45400
(937) 225-2910/2564 (FAX)

United States Environmental Protection Agency:

RICHARD KARL
Director of Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

SHERRY L'ESTÈS
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

FOR THE UNITED SCRAP LEAD
RESPONDENT GROUP

Ben L. Pfefferle ~~IN~~ (0024297)
Baker & Hostetler, LLP
Capitol Square, Suite 2100
65 East State Street
Columbus, OH 43215-4260

Attorney for Respondent Group

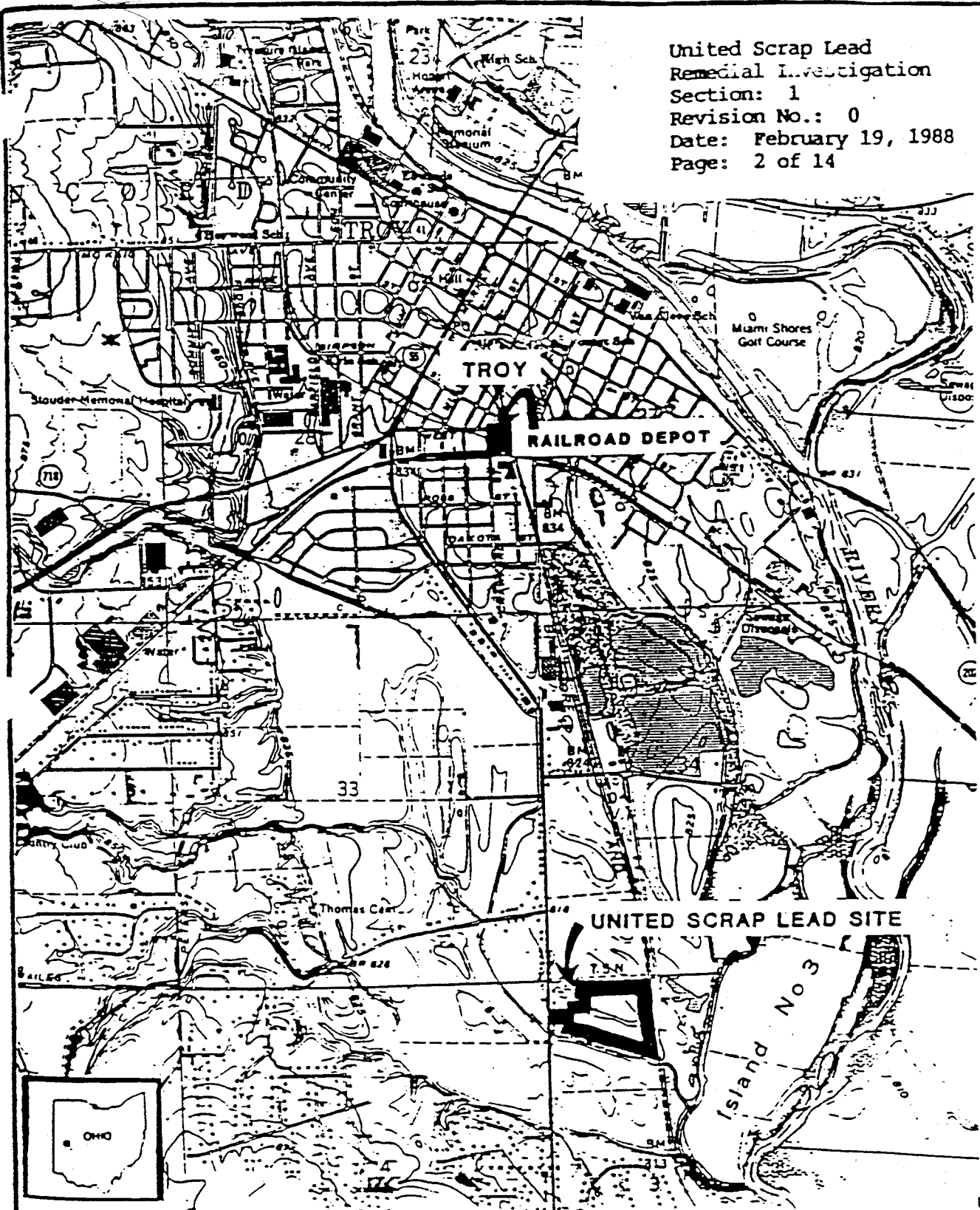
FOR BURNS IRON & METAL COMPANY, INC.

~~STEPHEN~~ HAUGHEY *0 1*
Frost Brown Todd LLC
2200 PNC Center
201 E. Fifth Street
Cincinnati, Ohio 45202-4182

Attorney for Burns Iron & Metal Co., Inc.

APPENDIX A

United Scrap Lead
Remedial Investigation
Section: 1
Revision No.: 0
Date: February 19, 1988
Page: 2 of 14



Source: USGS- Troy, OHIO
7 1/2 Min. Quadrangle Map
Photorevised 1982

1000 0 1000 2000 feet

GENERAL SITE LOCATION

APPENDIX B

United Scrap Lead Respondent Group Members

AK Steel Corporation, Successor-in-Interest to the Eastern Steel Division of Armco, Inc.

The Atlas Lederer Company

Baker Iron & Metal Company, Inc.

Bill's Battery Company, Inc.

Cherrington Scrap Metals, Inc.

Cohen Brothers, Inc.

Commercial Metals Company

Consolidated Rail Corp.

D. Kirschner & Son, Inc., Wolf Company and
David J. Joseph Company

Dobrow Industries, Inc.

Eagle Iron Co., Inc.

Herman Strauss, Inc.

J. Topy & Sons, Inc.

Midwest Corporation

Muskingum Iron & Metal Company

RMS Properties Corporation fka Chillicothe Iron & Metal Co.

Sims Brothers, Inc.

The Wilmington Iron & Metal Co., Inc.

Worly Steel & Supply Co., Inc.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY KATZ;
BEST RENTALS LLC;
RENTAL LLC 1 - 50; and
COLUMBUS RECYCLING LLC,
SAUL SENSER,
ROBERT WILLIAM BURNS;
DAVID R. BURNS;
THOMAS P. BURNS TRUST;
EMMA JEAN BURNS TRUST;
THOMAS BURNS
BRIAN J. BURNS;
JOYCE M. BURNS, and
JOSEPH A. BURNS,

Defendants.

CIVIL ACTION NO. 3:05 CV 0058
Hon. Walter Herbert Rice

STIPULATION, SETTLEMENT AGREEMENT, AND ORDER

The United States of America, by authority of the Attorney General of the United States and acting at the request of the Administrator of the Environmental Protection Agency ("EPA"), filed a Complaint against present and former shareholders of Burns Iron & Metal Company ("BIMCO") seeking to recover assets of BIMCO under the Sections 3306 and 3307 of the Federal Debt Collection Procedure Act ("FDCPA"), 28 U.S.C. §§ 3306, 3307 and the Federal Priority Act ("FPA"), 31 U.S. § 3713(a). This Stipulation, Settlement Agreement and Order is between the United States and some (but not all) of the present and former shareholders of BIMCO who were named as defendants in this action, specifically Robert William Burns, David R. Burns, Emma

Jean Burns Trust, Joseph A. Burns, and Joyce M. Burns ("the Settling Defendants"). The United States and the Settling Defendants agree that settlement of this action without further litigation is in the public interest and that entry of this Stipulation, Settlement Agreement and Order is the most appropriate means of resolving this matter.

NOW THEREFORE, before the taking of any testimony, without adjudication or admission of any issue of fact or law, or any determination of liability, and upon consent and agreement of the parties to this Stipulation, Settlement Agreement and Order, it is hereby AGREED, STIPULATED, and ORDERED:

1. This Court has personal jurisdiction over the Settling Defendants and subject matter jurisdiction over this action under Section 3004, 28 U.S.C. § 3304, and 28 U.S.C. §§ 1331 and 1345. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b). The Complaint states a claim upon which relief may be granted.

2. Within twenty (20) calendar days after entry of this Stipulation and Order, the Settling Defendants shall collectively pay the settlement amount to the United States of America of forty-nine thousand, five hundred dollars (\$49,500). Specifically, David A. Burns shall pay \$16,500 to the United States, and the remaining Settling Defendants - William R. Burns, the Emma Jean Burns Trust, Joyce Burns and Joseph Burns - shall collectively pay \$33,000 to the United States. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S.

Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 9124845, the EPA Region and Site Spill ID Number 05H5, DOJ Case Number 90-11-3-279B, and the name and address of the party making the payment. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Southern District of Ohio following entry of this Stipulation, Settlement Agreement and Order by the Court. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendants shall send notice to EPA and DOJ that payment has been made in accordance with Section XII (Notices and Submissions). The total amount to be paid pursuant to this paragraph shall be deposited in the United Scrap Lead Site Special Account within the EPA Hazardous Substance Superfund.

3. The Settling Defendants shall provide notice of payment, referencing United States v. Larry Katz et al., Civil Action No. 3:05 CV 0058, USAO File Number 9124845, the EPA Region and Site Spill ID Number 05H5, and the DOJ Case Number 90-11-3-279B to the following:

As to the United States:

As to DOJ

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ #90-11-3-279B

As to EPA

Sherry L. Estes
Associate Regional Counsel
ATTN: United Scrap Lead Salvage Site
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

Richard C. Karl
Director, Superfund Division
Remedial Project Manager
ATTN: United Scrap Lead Salvage Site
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

4. If any payments required under paragraph 3 are not paid when due, the Settling Defendants shall pay a stipulated penalty of one hundred and fifty Dollars (\$150.00) per day that such payment is late. The United States, in its sole and unreviewable discretion, may reduce or waive stipulated penalties otherwise due under this Stipulation and Order. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, IL 60673

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, USAO file number 9124845, EPA Region 5, and

Site/Spill ID No. 05H5, and U.S. DOJ case number 90-11-3-279B.

5. If any payments required under paragraph 3 or any stipulated penalties required under paragraph 4 are not paid when due, interest shall accrue on any amounts overdue from the first day after the payment or stipulated penalties are due through the date of payment at the rate of interest specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

6. Payment of all amounts due under this Stipulation, Settlement Agreement and Order shall constitute full settlement and satisfaction of the FDCPA and FPA claims of the United States asserted in the Complaint filed in this action against the Settling Defendants. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the United Scrap Lead Superfund site ("Site"), which encompasses approximately 25 acres, located at 2117 South County Road 25A, in Concord Township, Miami County, Ohio, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site, including any claim under the United States Constitution, the Constitution of the State of Ohio, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

7. This Stipulation and Order shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, and other applicable federal authority. The United States shall be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

8. The Settling Defendants shall be liable for any and all expenses, including but not limited to attorney's fees, incurred by the United States in collecting any defaulted portion of the amounts due under this Stipulation, Settlement Agreement and Order.

9. Within thirty (30) days of the receipt of all amounts due under this Stipulation, Settlement Agreement and Order, the United States shall file Notice with the Court that full payment has been received. At that time, the claims asserted in the Complaint against the Settling Defendants shall be dismissed with

prejudice, with each party bearing its own costs and attorneys fees.

10. The payment obligations of this Stipulation, Settlement Agreement and Order are joint and several and are binding upon the Settling Defendants' successors and assigns.

11. The undersigned representatives of the Settling Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certify that each is fully authorized to enter into the terms and conditions of this Stipulation, Settlement Agreement and Order and to execute and legally bind that party to it.

12. The Court shall retain jurisdiction to interpret and enforce this Stipulation, Settlement Agreement and Order until the United States files the Notice of payment.

13. By entering into this Stipulation, Settlement Agreement and Order, the Settling Defendants do not admit that they violated any federal, state, or local law. This Stipulation, Settlement Agreement and Order is entered into between the United States and the Settling Defendants solely for the purpose of settlement of the FDCPA and FPA claims asserted in the Complaint in this action and does not constitute an admission or finding of any violation of federal, state, or local law. This Stipulation, Settlement Agreement and Order does not resolve or in any way modify the United States' claims against present and former shareholders of BIMCO that are not parties to this agreement, or resolve or in any way modify any of the claims of the United

States against BIMCO under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA") in United States v. A-L Processors et al., Case No. C-3-91-309 (S.D. Ohio)

AS STIPULATED AND AGREED TO BY THE PARTIES, IT IS SO ORDERED AND ADJUDGED.

Date: _____

United States District Judge

THE UNDERSIGNED PARTIES enter into this Stipulation, Settlement Agreement and Order in the matter of United States v. Larry Katz et al, Civil No. 3:05 CV 0058

FOR THE UNITED STATES

Date: 5/5/06

~~_____
SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural
Resources Division~~

~~_____
JOSEPH W.C. WARREN
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
(202) 514-4113/616-6584 (FAX)~~

GREGORY G. LOCKHART
United States Attorney
Southern District of Ohio

PATRICK D. QUINN
Assistant U.S. Attorney
Southern District of Ohio
Federal Building, 602
200 W. Second Street
Dayton, OH 45400
(937) 225-2910/2564 (FAX)

For the United States Environmental
Protection Agency:

RICHARD KARL
Director of Superfund Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

SHERRY L. ~~ESTES~~
Associate Regional Counsel
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

FOR THE SETTLING DEFENDANTS

STEPHEN HAUGHEY
Frost Brown Todd LLC
2200 PNC Center
201 E. Fifth Street
Cincinnati, Ohio 45202-4182